

DIVISION I

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
ROBERT J. GLADWIN, Judge

CA05-851

MAY 3, 2006

HELEN SMITH

APPELLANT

APPEAL FROM THE OUACHITA  
COUNTY CIRCUIT COURT  
[NO. JV-2003-104]

V.

HON. LARRY W. CHANDLER,  
JUDGE

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

AFFIRMED

This is an appeal from a decision of the Ouachita County Circuit Court terminating the parental rights of appellant Helen Smith as to her two minor children, L.S. (D/O/B June 28, 2001) and C.S. (D/O/B October 5, 2002). On August 25, 2003, appellee Arkansas Department of Human Services (“ADHS”) filed a petition for emergency custody of the children, based on reports of physical, medical, and environmental neglect. The petition was granted, and subsequent to an adjudication hearing held on September 17, 2003, the children were adjudicated dependent/neglected pursuant to an order filed on October 23, 2003. The initial plan for the case was reunification, and appellant was ordered to cooperate with ADHS and to follow the case plan: maintain adequate housing and income; attend and complete individual counseling and follow the recommendations of her therapist; exhibit and

demonstrate appropriate boundaries in daily interaction with her children; visit with L.S. during the child's therapy sessions in Little Rock;<sup>1</sup> and not permit any other individual to reside in her home.

Subsequent to a review hearing held on May 4, 2004, the trial court filed a review order on May 25, 2004, that included the return of L.S. to appellant's custody and overnight visits with C.S. in her home. On July 1, 2004, ADHS filed a motion for an ex parte emergency change of custody related to L.S. because appellant was allowing other individuals to live in her home in direct conflict with the case plan and trial court's orders. The motion was granted, and L.S. was again removed from appellant's custody. As of the January 5, 2005, review hearing, the primary goal of the case was changed from reunification to termination of parental rights/adoption based upon appellant's noncompliance with the case plan, failure to attend counseling sessions, or maintain stable housing. ADHS filed a petition for termination of appellant's parental rights on March 4, 2005, and a hearing was held on the petition on March 16, 2005. Her parental rights with respect to L.S. and C.S. were terminated pursuant to an order filed on April 14, 2005. This no-merit appeal followed.

Pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, \_\_ S.W.3d \_\_ (Oct. 7, 2004)(*Linker-Flores I*), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel, after a conscientious review of

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<sup>1</sup>L.S. was diagnosed as having reactive attachment disorder and was receiving therapy and placed in therapeutic foster care.

the record, has tendered a motion to withdraw on the ground that this appeal is wholly without merit. The motion was accompanied by a brief purportedly presenting a thorough and professional evaluation of the record and discussing all matters in the record that might arguably support an appeal, including any adverse rulings, and a statement as to why counsel considers each point raised as incapable of supporting a meritorious appeal. Appellant was provided with a copy of her counsel's brief and notified of her right to file a list of points on appeal within thirty days; she filed no points.

Our review of adverse rulings in no-merit termination-of-parental-rights cases is limited to the termination hearing. *See Linker-Flores v. Ark. Dep't of Human Servs.*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Nov. 17, 2005)(*Linker-Flores II*); *Lewis v. Ark. Dep't of Human Servs.*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Nov. 17, 2005). However, in determining what constitutes a "conscientious review of the record" for purposes of reviewing the sufficiency of the evidence, our supreme court has provided that "we must examine evidence from all hearings and proceedings in the case, as the circuit court took judicial notice and incorporated by reference into the record all pleadings and testimony in the case that occurred before the termination-of-parental-rights hearing." *Lewis, supra*, \_\_\_ Ark. at \_\_\_, \_\_\_ S.W.3d at \_\_\_ (citing Ark. Code Ann. § 9-27-341(d)(2)). If this court determines, after a full examination of the record, that the appeal is frivolous, we may grant counsel's motion and dismiss the appeal.<sup>2</sup>

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<sup>2</sup>The procedure of our appellate courts pursuant to *Anders v. California*, 386 U.S. 738 (1967), is to grant counsel's motion to withdraw and affirm the conviction, not dismiss the appeal. *Smith v. Ark. Dep't of Human Servs.*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_

The only adverse ruling in the termination hearing is the sufficiency of the evidence to terminate appellant's parental rights. An order forever terminating parental rights must be based upon clear and convincing evidence that the termination is in the best interests of the children, taking into consideration the likelihood that the children will be adopted and the potential harm caused by continuing contact with the parent. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2002). In addition to determining the best interests of the children, the court must find clear and convincing evidence that circumstances exist that, according to the statute, justify terminating parental rights. Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2002). One such set of circumstances that may support the termination of parental rights is when the "juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent." Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Repl. 2002). In the instant case, the children had been in foster care from August 25, 2003, to March 16, 2005, the date of the hearing on the petition for termination, but for the brief period of May 25, 2004, to July 1, 2004, when L.S. was returned to appellant's custody.

A heavy burden is placed upon the party seeking to terminate parental rights because this is an extreme remedy in derogation of the natural rights of the parents. *Jones v. Ark.*

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(Dec. 7, 2005) (citing *Moore v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Apr. 21, 2005)).

*Dep't of Human Servs.*, \_\_ Ark. \_\_, \_\_ S.W.3d \_\_ (Mar. 24, 2005). Parental rights, however, will not be enforced to the detriment of the child; thus, parental rights must give way to the best interest of the child when the natural parent seriously fails to provide reasonable care for the minor child. *Id.*

The evidence indicates that appellant failed to comply with the case plan. At the time of the termination hearing, she had discontinued her personal counseling sessions, having no contact with her therapist since November 24, 2004. She failed to maintain stable housing, obtaining several residences throughout the course of the case and continued to have difficulty maintaining continuous, adequate utility services. The trial court discussed the services provided by ADHS during the course of the case, including, specialized foster care placement, individual counseling for appellant, transportation to counseling sessions, referral to community resources such as housing assistance, and family casework. The trial court also made a specific finding that it was contrary to the children's best interests, health, safety, and welfare to return them to the parental care and custody of appellant.

The record has been reviewed in accordance with *Linker-Flores I & II* and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals. From our review of the record and the brief presented to us, we cannot say that the trial court erred in entering an order terminating appellant's parental rights. There are no errors with respect to the single ruling that was adverse to appellant, and this appeal is without merit. Accordingly, we grant counsel's motion to be relieved and affirm the trial court's order.

Affirmed.

GRIFFEN and NEAL, JJ., agree.